IN THE

Supreme Court of the United States

No. 358. OCTOBER TERM, 1941.

EMIL STEIN,
Petitioner and Appellant below,

vs.

PRESTON DELANO, Comptroller of the Currency, and ROGER E. BROOKS, substituted for E. LORRY KEETON, Receiver of the NEW JERSEY NATIONAL BANK & TRUST COMPANY OF NEWARK, NEW JERSEY,
Defendants and Appellees below.

On Petition for Writ of *Certiorari* to the United States Circuit Court of Appeals for the Third Circuit.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING, AND PETITION FOR REHEARING.

SAUL J. ZUCKER,
LIONEL P. KRISTELLER,
Attorneys for and of Counsel with Petitioner.
744 Broad Street,
Newark, N. J.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.

INDEX.

	PAGE
MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING	1
PETITION FOR REHEARING	3
I. The decision of the Circuit Court of Appeals for the Third Circuit herein is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Garvy* v. *Wilder, et al.*, 121 Fed. (2d) 714	4
The case at Bar—Third Circuit, 121 Fed. (2d) 975	4
Garvy v. *Wilder, et al.*—Seventh Circuit 124 Fed. (2d) 714	7
II. Under New Jersey local law, a creditor's right to moratory interest is extinguished by his acceptance of the entire principal of the debt—and this rule applies in liquidations as well as in ordinary debtor-creditor relationships	11
CONCLUSION	17
CERTIFICATE OF COUNSEL	18
APPENDIX	19–24
Title 12 U. S. C., Sec. 64	19
Title 12 U. S. C., Sec. 194	19
Garvy, Rec'r, etc. vs. *Wilder, et al.*, 121 Fed. (2d) 714	20

PAGE

Awotin v. *Atlas Exchange Nat'l Bank*, 295 U. S. 209 10

Bd. of Education v. *Nat'l Union Bank*, 121 N. J. L. 177; 1 Atl. (2d) 383 12

Cumberland Lumber Co. v. *Clinton Hill Lumber Co.*, 64 N. J. E. 521..... 16

Deitrick v. *Greaney*, 309 U. S. 190..... 10

Economy, etc. v. *Fidelity, etc.*, 105 N. J. L. 206; 144 Atl. 30 12

Erie Railway Co. v. *Ackerson*, 33 N. J. L. 33..... 12

Erie Railroad v. *Tompkins*, 304 U. S. 64....1, 5, 7, 8, 9, 11

Flynn v. *Amer. Bkg. Co.*, 69 Atl. 771 (from Maine) 16

Freeholders v. *Veghte*, 7 N. J. L. J. 145..... 13

Garvy v. *Wilder, et al.*, 121 Fed. (2d) 714.....1, 2, 4, 7, 8

Greva v. *Rainey*, 41 Pac. 2nd 328 (from California) 15

Harter v. *Mechanics Nat'l Bank*, 63 N. J. L. 578; 44 Atl. 715 11

Jones v. *Skinner*, 80 Pac. 2nd 60 (from Oregon).... 15

McConnell v. *Park Bank*, 263 S. W. 638 (from Tennessee) 15

National Bank v. *Mechanics Nat'l Bank*, 94 U. S. 437 (from New York)..... 15

Pufahl v. *Park*, 299 U. S. 217..... 9

Rawlings v. *Ray*, 312 U. S. 96..... 9

Richmond v. *Irons*, 121 U. S. 27 (from Illinois)..... 15

Simon v. *N. J. Asphalt, etc. Co.*, 123 N. J. L. 232; 8 Atl. (2d) 256 12

Warren, etc. v. *Hartford, etc.*, 102 N. J. L. 616; 123 Atl. 479..... 14

U. S. Sav. Bank v. *Morgenthau*, 85 Fed. 2nd 811 (from D. C.)..... 16

Title 12 U. S. C. 64..... 10

Title 12 U. S. C. 194..... 10

IN THE

Supreme Court of the United States

No. 358. October Term, 1941.

Emil Stein,
Petitioner and Appellant below,

vs.

Preston Delano, Comptroller of the Currency, and Roger E. Brooks, substituted for E. Lorry Keeton, Receiver of the New Jersey National Bank & Trust Company of Newark, New Jersey,
Defendants and Appellees below.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING.

Petitioner presents this motion for leave to file the annexed petition for a rehearing of the petition for *certiorari* herein. Since the filing of the petition for *certiorari*, and during the Term at which said application was heard and decided, which Term has not yet expired, there was reported in the September 8, 1941 issue of the Federal Reporter the decision by the Circuit Court of Appeals for the Seventh Circuit in *Garvy* v. *Wilder, et al*, 121 Fed. (2d) 714 (See appendix). That decision creates a direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case at bar on the issue of whether the rule established by *Erie Railroad* v. *Tompkins*, 304 U. S. 64, applies to cases arising out of the "National Banking Act".

The Seventh Circuit applied *local law (Illinois)* on the issue of whether a national bank receiver could collect mor-

atory interest accrued under a stock assessment, after he had accepted full payment of the principal of the assessment.

The Third Circuit applied "*federal law*" on the issue of whether a national bank receiver could pay moratory interest to depositors after they had accepted full payment of principal of their deposits.

The "National Banking Act" does not touch upon this question.

While *Garvy* v. *Wilder* was officially reported before the first petition for rehearing herein was filed, it escaped the attention of petitioner's counsel until November 21, 1941, when reference to it appeared in the "New Jersey Law Journal" (a weekly periodical publishing court calendars and other matters of interest to the bar generally). Petitioner deems the *Garvy* case to be of the utmost importance in the protection of his rights, and since the first petition for rehearing was based on totally unrelated grounds (the national scope of the issues involved), it is submitted that petitioner ought not to be prejudiced for not presenting the within arguments sooner.

WHEREFORE, petitioner respectfully moves that leave be granted to file the annexed petition for rehearing, and for such other further relief as to the Court shall seem just.

Respectfully submitted,

SAUL J. ZUCKER,
LIONEL P. KRISTELLER,
Counsel for Petitioner.

Dated: November 29, 1941.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 358. OCTOBER TERM, 1941.

EMIL STEIN,
Petitioner and Appellant below,

vs.

PRESTON DELANO, Comptroller of the Currency, and ROGER E. BROOKS, substituted for E. LORRY KEETON, Receiver of the NEW JERSEY NATIONAL BANK & TRUST COMPANY OF NEWARK, NEW JERSEY,
Defendants and Appellees below.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR REHEARING.

The petitioner, EMIL STEIN, presents this, his second petition for a rehearing of the above-entitled cause, and in support thereof respectfully shows:

1. His original petition for *certiorari* herein was filed August 7, 1941.

2. On October 13, 1941, this Court denied *certiorari.*

3. On November 4, 1941, a petition for a rehearing, based on other grounds (the national scope of the issues involved) was duly presented, and was denied by this Court on November 10, 1941.

4. The order of this Court, denying *certiorari,* was issued on October 13, 1941, and the term of this Court at which such order was entered has not expired.

5. Your petitioner now seeks a rehearing for the following reasons:

I.

The decision of the Circuit Court of Appeals for the Third Circuit herein is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Garvy* v. *Wilder, et al.,* 121 Fed. (2d) 714.

The right of a receiver of a national bank, after he had accepted payment of the principal of a stock assessment, to collect moratory interest thereon was held in the Seventh Circuit to be governed by the *local law* of the state in which the bank was located, to wit: Illinois; while the right of a receiver of a national bank to pay the depositors moratory interest after they had accepted the full principal of their claims was held in the Third Circuit, in the case at bar, to be governed by *federal law*—unfettered by the applicable local law of the state where the bank carried on its business, to wit: New Jersey.

An analysis of the facts in these two cases shows such a similarity of issues that it is illogical for local law to govern one, and federal law the other.

The case at Bar—Third Circuit, 121 Fed. (2d) 975.

A Receiver was appointed for the New Jersey National Bank & Trust Company on June 11, 1932. Subsequently, the

Comptroller of the Currency levied a 100% stock assessment payable September 12, 1932, as a result of which, stockholders paid over $1,000,000.00 to the receiver. From time to time dividends *on account of the principal* of deposits and other claims were paid until finally, in 1939, the *final* 5% principal dividend (specifically so designated) completed the full 100% of the principal of all claims. There remains a surplus of some $750,000.00 which the Comptroller and Receiver express their intention of paying to depositors as moratory interest.

Petitioner instituted a class action on behalf of all stockholders in the District Court contending that when the depositors unqualifiedly accepted payment in full of the principal of their claims, they could no longer claim or collect moratory interest thereon. This, petitioner urged, and still maintains, is New Jersey local law (established by the cases discussed, *infra*), and should have been applied by the District Court in rendering its decision—especially in the light of *Erie Railroad* v. *Tompkins*, 304 U. S. 64. The District Court applied *federal law*, and dismissed the bill of complaint (Record 66-78; 35 Fed. Supp. 260).

The Circuit Court of Appeals affirmed the decision of the District Court, likewise applying *federal law* (Record 83-93). Paradoxically, having first concluded *without* reference to the local law that the depositors were entitled to moratory interest, notwithstanding the acceptance of the full principal, *the court then applied New Jersey local law in fixing the rate at which interest should be computed.* The crux of the Circuit Court's decision is as follows:

> "The rule as to waiver of interest is equally inapplicable. It does not apply in receiverships for

the reason that during the administration nothing could have been accomplished by a formal demand for interest. Until the principal of all the claims are paid it cannot be known whether the estate would have enough remaining assets to make payment upon the interest. Therefore there can be no waiver of the claim for interest. The writer of the law review article from which we have already quoted summarizes the matter thus:

'Even if it be conceded that the dividends are principal, it should not follow that the obligation for interest is thereby extinguished. The rationale of the general rule in this regard is that when the creditor *voluntarily* accepts the principal as such he ought to be regarded as having waived the interest. In the insolvency cases there is no voluntary acceptance of principal because the creditor is precluded from rejecting the dividends and demanding payment of principal and interest in full.'

HANSON, Effect of Insolvency Proceedings on Creditor's Right to Interest, 32 Michigan Law Review 1069, 1085." (Record, p. 90.)

That the Circuit Court was deciding this vital issue without regard to the law of New Jersey is proved by the reference in its opinion to decisions in Tennessee, California, Maine, and New York, and to annotations, texts, and law review articles. We have no argument with the cited decisions as representing the law of the jurisdictions in which they were rendered. *We are concerned only with the Circuit Court's approach to the issue before it.*

It is submitted that the absence of any reference to New Jersey decisions or local law, coupled with the exhaustive historical and philosophical treatment of "interest" shows that the Circuit Court was applying its *independent judgment* on the issue before it.

We shall now compare the decision of the Third Circuit in the case at bar with *Garvy* v. *Wilder* in the Seventh Circuit.

Garvy v. *Wilder, et al.*—Seventh Circuit 121 Fed. (2d) 714.

The Waukegan, (Illinois) National Bank failed on June 18, 1931. Thereafter a 100% stock assessment was levied by the Comptroller of the Currency payable September 29, 1932. Approximately four years later—August 11, 1936—two stockholders paid in full the principal amount of the stock assessments levied against them, but denied liability for any interest. The receipts which were given to them by the Receiver acknowledged the payment of the full principal of the assessment, but attempted to reserve to the Comptroller the right to collect the interest in the following language: *"Interest on said principal amount of said assessment still remaining due and unpaid."* Suit to collect the interest was instituted in February, 1940.

A number of interesting issues were raised in that suit, but for our purposes, only one need be discussed. It is best stated in the language of the Court at page 717:

> "Rather unsettled, and in dispute, is defendant's contention that payment of the principal extinguished any interest that might otherwise accrue where the obligation for the indebtedness is imposed by state or Federal statute."

In deciding this "unsettled and disputed" issue, the Court felt constrained to follow the rule of *Erie* v. *Tompkins, supra.* It thereupon applied the local law of Illinois,

and reversed its own prior holding which had applied federal law.

> "This Court (7th Circuit) in Graves *v.* Saline County 7 Cir., 104 F. 61, announced the rule which denied the right to recover interest after acceptance of the principal."
>
> "In view of the holding in Erie R. Co. *v.* Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 487, *our decision must now be overruled or limited in its effect to those states where such denial of liability for interest is the law.* For, in Illinois, where this bank was located and where this action was begun, a contrary conclusion has been reached. Feldman *v.* City of Chicago, 363 Ill. 247, 254, 2 N. E. 2d 102; Northwestern Yeast Co. *v.* City of Chicago, 301 Ill. App. 303, 309, 22 N. E. 2d 781." (Italics ours.)

It is submitted that a direct conflict in approach is evidenced by the decisions in the Third Circuit in the case at bar and Seventh Circuit in *Garvy* v. *Wilder, et al., supra.* The basic question to be determined by this Court is, after all, whether the "National Banking Act" eliminates the application of the rule of *Erie v. Tompkins, supra,* in all cases arising out of the "Act."

In the *Garvy* case, the Court was faced with a double issue; first, whether interest ran on stock assessments, and second, whether the payment of the principal of the assessment extinguished the moratory interest thereon. On the former obviously federal issue, the court applied federal law. The latter issue however, the court considered purely local in nature, and followed *Erie* v. *Tompkins, supra.*

In the case at bar, the court was faced only with the second issue of the *Garvy* case. It rejected the doctrine of *Erie* v. *Tompkins, supra,* and exercised its independent judgment.

Do the circumstances of these two cases justify a difference in treatment?

First, the fact that a *receiver* of a national bank was a party in the case at bar could not have been crucial because a receiver of a national bank was a party in the *Garvy* case.

Second, the fact that provisions of the "National Banking Act" were brought in issue, could not have been conclusive because they appeared in both suits. Besides, *Pufahl* v. *Parks,* 299 U. S. 217 and *Rawlings* v. *Ray,* 312 U. S. 96 hold that local statutes of limitations apply to suits brought under the "National Banking Act."

Third, the fact that in the case at bar the meritorious issue was whether the depositors were entitled to interest after acceptance of the principal, while in the Seventh Circuit case it was whether the receiver was entitled to interest under similar circumstances, could not have been decisive, because essentially the question for decision in both cases was identical, namely the collection of moratory interest after the payment in full of the principal indebtedness.

Fourth, the fact that in the case at bar the receiver desires to pay out interest, while in the *Garvy* case he hoped to collect it, is not the basis of a valid distinction. The comparison itself proves the identity of the issues.

Fifth, the fact that in the instant case the principal of the claims was paid out and accepted in the process of

liquidation, while in the *Garvy* case the principal was paid and accepted in satisfaction of a statutory liability, affords no valid distinction because the legal relationship between the bank (or its subsequent receiver) and the depositor on the one hand, and the receiver and the assessed stockholder on the other, is the same—that of debtor and creditor.

Sixth, in neither the Third nor the Seventh Circuit cases could the action of the respective Courts be traceable to a desire to enforce *an express and specific provision of the "National Banking Act"* as in *Awotin* v. *Atlas Exchange Nat'l. Bank,* 295 U. S. 209, and in *Deitrick* v. *Greaney,* 309 U. S. 190. In the *Awotin* case, this Court held that conflicting local law does not excuse the violation by a national bank of a federal statute *expressly* prohibiting national banks from directly or indirectly entering into agreements of guaranty. In the *Deitrick* case, this Court held that conflicting local law does not validate the violation of an *express* provision in the "National Banking Act" prohibiting a national bank from purchasing and holding its own stock. The provisions for the payment of claims (Title 12 U. S. C. 194) and for the imposition of a stock assessment (Title 12 U. S. C. 64) *omit any reference to interest* (See appendix). Hence, there is no necessity for the application of federal law on the ground that local law may conflict with express provisions of the "National Banking Act".

Accordingly, it appears impossible to assign or arrive at any reason why the approach in these two cases should have been different. Petitioner urges that the approach adopted by the Seventh Circuit is the proper one, and in complete harmony with those decisions which have followed

Erie Railroad v. *Tompkins, supra.* But without pursuing the argument on the merits further at this point, the existence of a substantial conflict between circuits should move this court in the exercise of its discretion to grant petitioner's application for *certiorari.*

II.

Under New Jersey local law, a creditor's right to moratory interest is extinguished by his acceptance of the entire principal of the debt—and this rule applies in liquidations as well as in ordinary debtor-creditor relationships.

Petitioner realizes that it would be a work of supererogation for this Court to sustain his contention that the conflict in circuits justifies the allowance of *certiorari,* unless the application of local law would change the result below. By the application below of federal law, the depositors were held to be entitled to interest. Had New Jersey local law been applied, however, a contrary result would have been reached, and the fund in dispute would have been awarded to the stockholders.

In exploring New Jersey local law we start with certain fundamentals:

First, the relationship between a bank and its depositor is as follows:

> "The relation between a bank and its depositor is that of debtor and creditor, * * *." *Harter* v. *Mechanics Nat'l Bank,* 63 N. J. L. 578; 44 Atl. 715.

To the same effect are:

Economy, etc. v. *Fidelity, etc.*, 105 N. J. L. 206, 144 Atl. 30 (1928);
Bd. of Education v. *Nat'l Union Bank*, 121 N. J. L. 177, 1 Atl. (2d) 383, (1938).

Second, there is no statute in New Jersey allowing interest on judgments. Consequently, moratory interest never becomes an integral part of the debt in the sense that it does in jurisdictions having statutes allowing interest on judgments. In New Jersey, interest on a judgment is collected by practice. Recent evidence of this proposition is found in *Simon* v. *N. J. Asphalt, etc. Co.*, 123 N. J. 232 at 234; 8 Atl. (2d) 256, (1939) where the New Jersey Supreme Court said:

> "In our state the practice is to permit the collection of interest on a judgment. Erie Railway Co. *v.* Ackerson, 33 N. J. L. 33."

The *Ackerson* case, decided in 1868 by the same court, specifically based the allowance of interest on a judgment on the common law and not upon a statute, holding:

> "* * *. But, from a very early period, it has been the practice in this state, to collect legal interest on a judgment, by means of an endorsement on the execution, and the right to do this must be regarded as the common law of New Jersey, become so by the same usage that has permitted the Sheriff, with the consent of the plaintiff, to allow the goods levied on to remain in the possession of the defendant for an almost indefinite period."

In New Jersey, therefore, so far as moratory interest is concerned, a judgment is possessed of no greater efficacy than a claim not reduced to judgment.

Third, in simple debtor and creditor relationships in New Jersey, the payment of the principal indebtedness extinguishes the right to moratory interest thereon. There are not many reported cases, but the doctrine is settled.

In *Freeholders* v. *Veghte*, 7 N. J. L. J. 145, (Supreme Court 1884) the question was, whether the County could recover interest upon alleged defalcations of the County Collector after the principal amount of the defalcations had been repaid to the County. The amount misappropriated having been computed, the collector paid the principal indebtedness to the County. A formal resolution, adopted by the Freeholders, had provided that interest was to be computed and added to the principal indebtedness. *The Collector, however, paid only the principal indebtedness.* In dismissing that count of the complaint which sought the recovery of interest on the principal indebtedness for the period during which the funds had been used by the Collector, Justice Magie said:

> "*If interest is recoverable merely as damages for the breach of contract, it is a mere incident to the contract. Upon acceptance of performance of the contract, the right of action for its breach and consequently the right to damages disappears.* (Cases cited.) * * *
>
> My conclusion is that the interest claimed in the original bill of particulars was not the subject of any contract of defendant, but was recoverable only as damages for the wrongful detention of the borrowed money, which he had impliedly contracted to pay. That implied contract has been performed to the satisfaction of plaintiff. No cause of action thereon remains. Upon this claim no recovery can be had.

> It was suggested that plaintiff has no power to discharge defendant from his contract. But the suggestion is not applicable in the view I have taken. *The interest was not due by contract. I can perceive no reason why plaintiff could not accept a performance of the contract made with it although such acceptance practically debars it from damages it might otherwise recover.*" (Italics ours.)

In *Warren, etc.* v. *Hartford, etc.*, 102 N. J. L. 616; 133 Atl. 479, (E. & A. 1926) the question involved was whether a bonding company had to pay interest upon a claimant's demand for payment of work on a municipal job when the principal payment was properly met within ten days after the service of the statutory notice, but considerably after the general contractor was in default to the claimant. Justice Parker, speaking for the New Jersey Court of Errors and Appeals (the court of last resort), in disallowing the interest item, discusses the matter in the following language:

> "In considering this question, we should bear in mind *the fundamental principle of law, often overlooked, that interest is no part of a debt unless so stipulated in the contract;* that, usually, it is of statutory origin, *and is awarded as damages for the detention of a debt.* 33 C. J. 182." This principle is illustrated by such cases as *North Hudson County Railway* v. *Booraem*, 28 N. J. E. 593 (interest on award of commissioners denied to a mortgagee); *Freeholders* v. *Veghte* (Mr. Justice Magie, Somerset Circuit, 7 N. J. L. J. 145; *Anderson* v. *Huff*, 49 N. J. E. 349, 355; *Hill* v. *Aetna Life Ins. Co.*, (Mr. Justice Speer, Hudson Circuit) 39 N. J. L. J. 132, 135; *Hoover Co.* v. *Schaefer Co.*, 90 N. J. E. 515, and *Fidelity Co.* v. *Wilkes-Barre Co.*, 98 N. J. L. 507.

> * * * So, in a foreclosure of a mortgage, the principal and interest stipulated in the bond are totaled as of the date of the master's report, and the decree provides that the premises be sold to pay complainant the sum (reported by the master) with interest from the date of the report, and that out of the proceeds of sale the complainant be paid, 'said debt, interest and costs', *the debt being the amount reported.*" (Italics ours.)

Exhaustive research has disclosed no case in New Jersey distinguishing allowed claims in liquidation proceedings from other debts so far as moratory interest is concerned. We must reason, therefore, by analogy. Since an allowed claim in a receivership has the effect of a judgment, it is treated as such. As a judgment—in the absence of a *statute*—it bears moratory interest, *but only so long as the principal has not been paid.* Once the principal has been accepted, moratory interest as an incident standing alone cannot be collected.

In every reported decision where moratory interest survived the payment of the principal, the indebtedness arose in a jurisdiction where an existing statute allowed interest on judgments, thus making the interest an integral part of the indebtedness, and tantamount to contractual interest. Outstanding examples are:

National Bank v. *Mechanics Nat'l Bank,* 94 U. S. 437 (from New York);
Richmond v. *Irons,* 121 U. S. 27 (from Illinois);
McConnell v. *Park Bank,* 263 S. W. 638 (from Tennessee);
Jones v. *Skinner,* 80 Pac. 2nd 60 (from Oregon);
Greva v. *Rainey,* 41 Pac. 2nd 328 (from California);

Flynn v. *Amer. Bkg. Co.*, 69 Atl. 771 (from Maine);
U. S. Sav. Bank v. *Morgenthau*, 85 Fed. 2nd 811 (from D. C.).

New Jersey may be one of the very few states which does not have a similar statute. That being so, the payment of an allowed claim in receivership proceedings results in the same consequence as the payment of the principal of any other judgment or debt, to wit: the extinguishment of moratory interest. With this statement of the local law of New Jersey, the District Court Judge below was in accord (Record 74).

There is, however, one reported case in New Jersey in liquidation proceedings to which passing reference should be made—*Cumberland Lumber Co.* v. *Clinton Hill Lumber Co.*, 64 N. J. E. 521. In that case before any claims were paid in whole or in part, the receiver applied to the court for an order authorizing him to levy an assessment against stockholders to pay creditors the amounts due them. In permitting interest to be included in the assessment, the Chancery Court said:

> "The claims of creditors, with interest on them, are to be included in the amount to be assessed. As against a stockholder, interest is to be allowed to the same extent as if the action were against the corporation itself, not exceeding, however, the maximum liability of the stockohlders for unpaid stock."

This decision does nothing more than allow moratory interest on a simple debt. It does not concern itself with the question of whether the acceptance by these same creditors of the principal of their claims would have extinguished

their right to moratory interest. The case itself does not affect one way or the other the underlying law of New Jersey that acceptance of the principal of an indebtedness extinguishes the moratory interest.

Had the Third Circuit applied New Jersey local law as enunciated in the foregoing cases, the stockholders instead of the depositors would have been entitled to the surplus remaining after the principal amount of the deposits had been paid in full.

For the foregoing reasons, it is respectfully urged that a writ of *certiorari* directed to the Circuit Court of Appeals for the Third Circuit be granted.

Respectfully submitted,

SAUL J. ZUCKER,
LIONEL P. KRISTELLER,
Counsel for Petitioner.

Certificate of Counsel.

We, Saul J. Zucker, and Lionel P. Kristeller, counsel for the above-named petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Saul J. Zucker,
Lionel P. Kristeller,
Counsel for Petitioner.